



IT IS ORDERED as set forth below:

Date: May 14, 2009

**Paul W. Bonapfel
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN THE MATTER OF:	:	CASE NUMBER: A06-62966-PWB
	:	Substantively Consolidated
INTERNATIONAL MANAGEMENT ASSOCIATES, LLC,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 11 OF THE
Debtor.	:	BANKRUPTCY CODE
	:	
WILLIAM F. PERKINS, in his capacity as	:	
Plan Trustee for the substantively	:	
consolidated, post-confirmation estate of	:	
International Management Associates, LLC,	:	
	:	
Plaintiff	:	ADVERSARY PROCEEDING
	:	NO. 08-6180
v.	:	
	:	
ERRIN F. HARLEY-LEWIS,	:	
	:	
Defendant.	:	

**ORDER DENYING WITHOUT PREJUDICE PLAINTIFF'S REQUEST FOR ENTRY
OF DEFAULT JUDGMENT**

The Plaintiff seeks entry of default judgment in the amount of \$54,762.50 plus pre-

judgment interest of \$1,058.45 against the Defendant by the Clerk of the Bankruptcy Court pursuant to Rule 55(b)(1) of the Federal Rules of Civil Procedure, made applicable by Rule 7055 of the Federal Rules of Bankruptcy Procedure. The request for entry of default judgment raises two issues.

The first issue is whether the Clerk may enter default judgment. Rule 55(b)(1) provides that “[i]f the Plaintiff’s claim is for a sum certain or a sum that can be made certain by computation, the clerk – on the plaintiff’s request, with an affidavit showing the amount due – must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person.” Rule 55(b)(2) provides that “[i]n all other cases, the party must apply to the court for a default judgment.”

Rule 55(b)(1) limits the clerk's authority to enter judgment to a case “where entry of judgment is purely a ministerial act.” *Combs v. Coal & Mineral Management Services, Inc.*, 105 F.R.D. 472, 474 (D. D.C. 1984). Thus, if the relief sought is beyond the scope of merely entering a money judgment for a sum certain, entry of default judgment by the clerk is inappropriate.

Although the Plaintiff seeks entry of default judgment for a sum certain, the entitlement to the money judgment is founded on the avoidance of transfers pursuant to 11 U.S.C. § 544(b) and O.C.G.A. §§ 18-2-22(2) and 18-2-22(3). (Complaint, ¶¶ 11-20). Because avoidance of the transfer is a necessary adjunct to the recovery of the funds, entry of default judgment must be done by the Court, not the Clerk.¹

Having determined that the Court must review the request for entry of default judgment,

¹The Plaintiff’s request for entry of default judgment is incomplete in this respect. A proper motion would request entry of default judgment (1) avoiding the transfer(s); and (2) recovery of the amount or value of the transfer in the form of a money judgment.

the second issue is whether entry of judgment is appropriate. The Servicemembers Civil Relief Act, 50 App. U.S.C. § 521(b), requires a plaintiff seeking default judgment to file an affidavit indicating whether the defendant is or is not in the military service or that the plaintiff is unable to determine the defendant's military status. No such affidavit has been filed. Because the request for entry of default judgment is deficient for the reasons set forth above, it is

ORDERED that the request for entry of default judgment is denied without prejudice.

End of Order

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